IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. RONALD LESLIE MURRAY, Petitioner.	)	2 CA-CR 2007-0089-PR DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR89000193

Honorable Stephen M. Desens, Judge

REVIEW GRANTED; RELIEF DENIED

Ronald Leslie Murray — Florence
In Propria Persona

E S P I N O S A, Judge.

¶1 In 1989, petitioner Ronald Murray was convicted after a jury trial of one count each of kidnapping, sexual assault, and robbery and two counts of theft by control. The trial court sentenced Murray to an aggravated prison term of twenty-one years for sexual assault, to be served concurrently with aggravated terms of eight years for robbery and fifteen years each for the theft counts, to be followed by an aggravated, twenty-one year term for

kidnapping. After filing an appeal in which he was partially successful[1] and no less than seven petitions for review of the trial court's denials of post-conviction relief, Murray filed another petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S.[2] The trial court summarily dismissed Murray's pro se petition, and this petition for review followed. We will not disturb a trial court's ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no abuse here.

¶2 Murray argues that our supreme court's decision in *Canion v. Cole*, 210 Ariz. 598, 115 P.3d 1261 (2005), constitutes a significant change in the law requiring the trial court to permit post-trial discovery of exculpatory evidence and that he is entitled to a new trial as a result. In his petition for post-conviction relief, Murray described the exculpatory evidence as "all evidence . . . testified to at trial . . . by reported laboratory testing of personum [sic] items, Department of Public Safety (D.P.S.) expert Curtis Reinbold . . . [a]ll control[l]ed evidence alleged in the chain of custody by Cochise County Sheriff's Department . . . Detective Mary Ella Cowan and testified to at trial." To the extent we understand Murray's argument, as set forth below and in his petition for review, he seems

[1]The supreme court vacated that portion of our decision dealing with parole eligibility under *State v. Tarango*, 185 Ariz. 208, 914 P.2d 1300 (1996). *State v. Murray*, 194 Ariz. 373, ¶ 10, 982 P.2d 1287, 1289 (1999).

[2]Although this petition for review relates to the petition for post-conviction relief filed on January 5, 2007, Murray apparently has filed an additional petition for post-conviction relief that has been included in the record on review but is not the subject of this petition for review.

to be asking that he be permitted to perform deoxyribonucleic acid (DNA) testing on certain "biological evidence" within the state's control. In its brief minute entry ruling, the trial court dismissed Murray's petition for post-conviction relief, finding he had "fail[ed] to set forth any claim, precluded or otherwise, which present[ed] a material issue of fact or law which would entitle [Murray] to relief under Rule 32, and that no purpose would be served by any further proceedings."

¶3 Murray raised a related claim, without success, in an earlier petition for post-conviction relief, the trial court's denial of which we denied on review. *State v. Murray*, No. 2 CA-CR 2003-0157-PR (decision order filed Dec. 29, 2004). In that order, we noted that Murray had filed a petition for DNA testing in February 2003, in which he had claimed that the state should be ordered to preserve the evidence introduced at trial that might be subject to DNA testing and that such testing should take place. As we also noted in our decision order, the trial court had explained in its ruling denying Murray's request that "[n]o evidence exists at this time which could be subjected to DNA testing." We further explained in our order that there was no evidence in the record to suggest that the state had intentionally withheld evidence that might be subject to DNA testing, noting that A.R.S. § 13-4240, the statute that addresses post-conviction DNA testing, did not become effective until 2000 [3] and that the statute refers to the testing of evidence that is "still in existence." § 13-4240(B)(2), (C)(2). In light of the trial court's previous finding that no evidence

[3]2000 Ariz. Sess. Laws, ch. 373, § 1.

subject to DNA testing exists, and in the absence of Murray's having set forth any reason to believe that anything has changed to alter that finding, we conclude the trial court correctly dismissed his claim.

¶4 Accordingly, we grant the petition for review but deny relief.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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JOSEPH W. HOWARD, Judge